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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 717 .

PETER P. CORCORAN,

Petitioner,

against

ROYAL DEVELOPMENT COMPANY,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

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Rochester, N. Y.,
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BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

Statement of the Case

This is a suit in equity brought in the United States District Court for the Eastern District of New York by Peter P. Corcoran, petitioner herein, against Royal Development Company, respondent herein, for what purported to be a declaratory judgment adjudicating the rights of various classes of security holders of the defendant company. Before answering, the defendant moved for a dismissal of the complaint on the ground that the complaint on its face showed that the court lacked jurisdiction because the amount actually in controversy did not exceed $3,000.00 exclusive of interest and costs. An order was made and entered in the District Court granting the motion and dismissing the complaint. An appeal from said order was taken by Peter P. Corcoran to the United States

Circuit Court of Appeals, Second Circuit, which affirmed the order of the District Court. The complaint on its face alleges in paragraph Third (Record, p. 6) that the matter in controversy exceeds, exclusive of interest and costs, the sum of $3,000. But it also alleges in paragraph Twenty-eighth (Record, p. 22) that the plaintiff is the registered owner of seven Participating Contracts of the aggregate principal amount of $1,400.00. Both of the courts below, therefore, have held that on its face the complaint shows that the court lacks jurisdiction.

ARGUMENT

I.

There is nothing in this case to warrant the granting of a writ of certiorari.

In both the District Court and in the Circuit Court of Appeals it has been held in the case at bar that the complaint shows on its face that the court lacked jurisdiction.

Both courts have recognized that under Title 28, U. S. C. A., Section 41, the District Court has jurisdiction only where there is a diversity of citizenship and where the matter in controversy exceeds, exclusive of interest and costs, the sum of $3,000.00. There being no question that there is diversity of citizenship in the case at bar, the only question is whether the matter in controversy, exclusive of interest and costs, exceeds $3,000.00.

Both courts have held that in determining this question, the court is not bound by an allegation in the complaint to that effect, but may scrutinize the complaint as a whole to determine this jurisdictional fact.

It is also a fact recognized by both courts and conceded by the plaintiff, that the complaint shows on its face that the sole interest of the plaintiff in the affairs of the defendant Company consists of the acquisition by the plaintiff from one Joseph R. Dunbeck of seven Participating Contracts of the aggregate principal amount of $1,400.00, and that this fact is alleged in Paragraph "Twenty-eighth" of the complaint (Record, p. 22).

Both courts rightly concluded, therefore, that from the whole of the complaint it appears that the sole interest of the plaintiff is $1,400.00.

To avoid this conclusion, the plaintiff has argued that the test to be applied is not the extent of the plaintiff's interest alone but the extent of the interest of all alleged creditors on whose behalf plaintiff attempts to bring this action, or in the alternative, the extent of the entire assets of the defendant company.

In answer to this contention of the plaintiff, the decisions in the District Court and in the Circuit Court of Appeals have differed somewhat in reasoning, both courts, however, reaching the same result.

The District Court held that the complaint attempts to state a cause of action for a declaratory judgment and hence is an action brought under Title 28, U. S. C. A., Section 400, known as the Federal Declaratory Judgment Act. Under that Act, as shown by *Southern Pacific Co. v. McAdoo* (1936), C. C. A. 9, 82 Fed. (2d) 121, the court may declare only the rights of "any interested party petitioning for such declaration". Therefore, even though the plaintiff sought in his complaint to bring the action not only on his own behalf but on behalf of all other creditors of the defendant, only the rights of the plaintiff himself

are before the court. Since the same essentials are required to give the court jurisdiction of such an action for a declaratory judgment as for any action (*Utah Fuel Co. v. National Bituminous Coal Commission,* 101 Fed. (2d) 426, affirmed 306 U. S. 56), the complaint must show that plaintiff's interest alone exceeds $3,000.00 or the essentials required for jurisdiction are lacking.

The Circuit Court of Appeals, however, held that despite plaintiff's attempt to seek a declaratory judgment, the action alleged in the complaint was not an action for a declaratory judgment because "stripped of its verbiage, the complaint is nothing more than a simple creditor's action, asking for distribution of a corporation's assets in equity" (Record, p. 32).

Both courts held, however, that whether or not the plaintiff's complaint alleges an action for a declaratory judgment, there can be no question that as an ordinary action it likewise does not meet the test of the required jurisdictional amount.

In *Lion Bonding & Surety Co. v. Karatz* (1922), 262 U. S. 77, the court held at p. 85:

> "* * * The facts specifically stated show that the amount in controversy was less than $3,000. Plaintiff's claim against the company was $2,100. He prayed that this debt be declared a first lien on the assets within the state. His only interest was to have that debt paid. The amount of the corporation's assets, either within or without the state, is of no legal significance in this connection. Nor is the amount of its debts to others. The case is not of that class where the amount in controversy is measured by the value of the property involved in the litigation. *Hunt v. New York Cotton Exch.,* 205 U. S. 322, 335, 51 L. ed. 821, 826, 27 Sup. Ct. Rep. 529; *Western & A. R. Co. v. Railroad Commission,* No. 195, decided February 19, 1923 (261 U. S. 264, ante, 645, 43 Sup.

Ct. Rep. 252). Nor is it like those cases in which several plaintiffs, having a common undivided interest, unite to enforce a single title or right, and in which it is enough that their interests collectively equal the jurisdictional amount. *Troy Bank v. G. A. Whitehead & Co.*, 222 U. S. 39, 41, 56 L. ed. 81, 82, 32 Sup. Ct. Rep 9. In the case at bar, if several creditors of the Company, each with a debt less than $3,000, had joined as plaintiffs, the demands could not confer jurisdiction. *Rogers v. Hennepin County*, 239 U. S. 621, 60 L. ed. 469, 36 Sup. Ct. Rep. 217; *Scott v. Frazier*, 253 U. S. 243, 64 L. ed. 883, 40 Sup. Ct. Rep. 553. Nor can Karatz's allegation that he sued on behalf of others similarly situated help him. Compare *Title Guaranty & S. Co. v. Idaho*, 240 U. S. 136, 60 L. ed. 566, 36 Sup. Ct. Rep. 345; *Eberhard v. Northwestern Mut. L. Ins. Co.*, 154 C. C. A. 233, 241 Fed. 353, 356. Since the bill in this case discloses that the amount in controversy was less than the jurisdictional amount, the general allegation that it exceeds this amount is, therefore, of no avail. *Vance v. W. A. Vandercook Co.*, 170 U. S. 468, 42 L. ed. 1111, 18 Sup. Ct. Rep. 645."

The District Court in the case at bar held (Record, p. 26):

> "The fact that the plaintiff alleges that this action was brought on behalf of himself and all other creditors of the defendant can avail him naught. It is not the aggregate amount of money owing to creditors that controls, but the amount that is due the plaintiff that gives this court jurisdiction. *Lion Bonding & Surety Co. v. Karatz*, 262 U. S. 77."

The Circuit Court of Appeals in the case at bar held (Record, p. 32):

> "* * * In the case at bar the complaint asks the 'declaration' of no rights that would not have to be adjudicated before there could be a distribution of the defendant's assets; and, stripped of its verbiage, the complaint is nothing more than a simple creditor's action, asking the distribution of a corpora-

tion's assets in equity. We do not mean to imply that the jurisdiction of the district court would be determined by a different rule if it had been for a 'declaratory judgment', but the authorities are more literally in point if we treat it as what it really is.

"In such an action there can be no question since *Lion Bonding & Surety Company v. Karatz*, 262 U. S. 77, 85, 86, that the amount due upon the plaintiff's debt is the 'amount in controversy'. The Supreme Court has never indicated any disposition to recede from that ruling, and in either the same, or substantially the same, situation three circuit courts of appeal have followed it. *Robbins v. Western Automobile Ins. Co.*, 4 Fed. (2) 249 (C. C. A. 7); *Pianta v. H. M. Reich Co. Inc.*, 77 Fed. (2) 888, 890 (C. C. A. 2); *Frank & Lambert, Inc., v. Rosengreen*, 97 Fed. (2) 460 (C. C. A. 8) * * *."

Hence we have in the case at bar both the District Court and the Circuit Court of Appeals holding that whether or not this is an action for a declaratory judgment, the complaint shows on its face that the plaintiff's alleged debt does not equal the jurisdictional amount and that under *Lion Bonding & Surety Company v. Karatz*, 262 U. S. 77, the test to be applied to determine whether it meets the jurisdictional amount required is that of the amount of the plaintiff's alleged debt. In addition, the District Court has held that if this is an action for a declaratory judgment, the Court, under the language of the Federal Declaratory Judgment Act, can declare the rights of only those "petitioning for such declaration"; that in such an action only the interest of the plaintiff himself can be considered; and that for that additional reason the court, in the case at bar, lacks jurisdiction.

The petitioner herein now asks this court to reverse its ruling in *Lion Bonding & Surety Co. v. Karatz*, 262 U. S. 77, on which the decisions of both the District Court and

the Circuit Court of Appeals were based. Petitioner presents no reason, however, why such a change should be made. This is not a case where the refusal by the Federal Courts to take jurisdiction would result in depriving the petitioner of his day in court. The only question is whether this case should be brought in the Federal courts or in the state courts. Judge Moscowitz in his decision in the District Court appropriately stated this proposition as follows (Record, p. 27):

> "* * * Cases are all too frequent of the kind mentioned in the above example. They should be discouraged by a dismissal of the complaint. Such cases should be brought in the States Courts which have jurisdiction of such cases regardless of amounts, and not in the Federal Court."

And as a matter of fact, petitioner in the case at bar, immediately after the decision in the United States District Court, did commence an action in the Supreme Court of the State of New York for the same relief demanded in the Federal Court action, and said State court action is now at issue and about to be tried.

The petitioner has wholly failed to show in what manner this petition for review on writ of certiorari of the decision in the case at bar of the Circuit Court of Appeals, Second Circuit, comes within the reasons stated by this Court in its rules as reasons for granting such a review. Not only is it a fact that the Circuit Court of Appeals, Second Circuit, in the case at bar, has not rendered a decision in conflict with the decision of another circuit court of appeals on the same matter, but, on the contrary, Judge Learned Hand, in his opinion in the Circuit Court of Appeals, has shown that this decision is in conformity with *Lion Bonding & Surety Co. v. Karatz, supra*, a decision of this Court, and

that in two other circuit courts of appeal the same ruling has been made, to wit, *Robbins v. Western Automobile Ins. Co.*, 4 Fed. (2d) 249 C. C. A. 7; *Frank & Lambert, Inc. v. Rosengreen*, 97 Fed. (2d) 460, C. C. A. 8, and that a similar decision has previously been made in the Second Circuit (*Pianta v. H. M. Reich Co. Inc.*, 77 Fed. (2d) 888, C. C. A. 2).

It is respectfully submitted, therefore, that there is no reason why this Court should recede from its ruling in *Lion Bonding & Surety Co. v. Karatz, supra*, and that on the contrary every consideration involved requires that that ruling should be adhered to.

Conclusion

It is respectfully submitted that a writ of certiorari should not be granted.

Respectfully submitted,

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